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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|---------------------------|---------------------|------------------|
| 10/685,893 | 10/15/2003 | Candace Christine Modrell | 2004-1003 | 5953 |
| 37476 | 7590 | 08/09/2005 | EXAMINER | |
| WHILTE-WELKER & WELKER, LLC P.O. BOX 199 CLEAR SPRING, MD 21722-0199 | | | | SMALLEY, JAMES N |
| ART UNIT | | PAPER NUMBER | | |
| 3727 | | | | |

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------|----------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/685,893 | MODRELL ET AL. | |
| | Examiner | Art Unit | |
| | James N. Smalley | 3727 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
 - 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 10/15/2003.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

DETAILED ACTION***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4, from which claims 5-9 depend, and claim 10, from which claims 11-14 depend, limit "the lid transitions to become thinner in an exponential manner until a predetermined thickness is achieved and then remains at a constant thickness until the base wall is reached." It is unclear how the transition is exponential to a constant thickness. While the curved portion (403) may comprise a surface defined by an exponential equation, the straight portion (404) could not be defined by an exponential equation which also defines the curve (403). Therefore, it is unclear how the transition is exponential before reaching the portion (408) of a constant thickness.

Claims 8-9, and claim 10 from which claims 11-14 depend, limit the linear rate of the changing thickness of the bead to between 10 and 20 degrees, and more specifically to 15 degrees. The claim is unclear because an angular measurement in degrees does not comprise a rate, which is a ratio of a change in one dimension relative to the change in another dimension.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Shapiro US 1,093,735.

Shapiro '735 teaches a lid (3) with a two tabs (8) and recessed and protruding areas (4) along the interior wall.

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5. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Hopkins US 3,966,082.

Hopkins '082 teaches a lid (50) with a tab (54) and recessed and protruding areas (53) along the interior wall (52).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5, 7-11 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLaren et al. US 4,407,426 in view of Hopkins US 3,966,082.

McLaren '426 teaches a lid (10) having a bottom wall (14), side wall (16), and whereby the interior wall becomes thicker at a liner rate of 15 degrees (see col. 3, lines 27-29), and then becomes exponentially thinner at (32) to a constant thickness at (30).

McLaren '426 does not teach a tab on the side of the body.

Hopkins '082 teaches it is known to provide a pull-tab on a lid to assist a user in removing the lid from a container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of McLaren '426, providing a pull-tab as taught by Hopkins '082, motivated by the benefit of providing a means to assist a user in removing the lid from the container.

8. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McLaren et al. US 4,407,426 in view of Hopkins US 3,966,082 as applied above to claims 4 and 10, and further in view of Shapiro US 1,093,735.

McLaren '426, as modified, fails to teach three or more tabs on the lid.

Shapiro '735 teaches a container with two pull-tabs (8).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of McLaren '426, providing two lift tabs, as taught by Shapiro '735, motivated by the benefit of providing a means to assist a user in removing the lid from a container.

Furthermore, Examiner notes it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It would be obvious to one having ordinary skill to provide two pull tabs because such is a mere duplication of the parts of the invention.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLaren et al. US 4,407,426 in view of Hopkins US 3,996,082 and further in view of Shapiro US 1,093,735 as applied above to claim 5, and further in view of Chou US 6,883,678.

McLaren '426, as modified, fails to teach three or more tabs on the lid.

Chou '678, figure 5, teaches a container with three pull-tabs (52).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of McLaren '426, providing three lift tabs, as taught by Chou '678, motivated by the benefit of providing a means to assist a user in removing the lid from a container, whereby the user can grip at several different locations along the perimeter of the lid.

Furthermore, Examiner notes it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It would be obvious to one having ordinary skill to provide three or more pull tabs because such is a mere duplication of the parts of the invention.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over McLaren et al. US 4,407,426 in view of Hopkins US 3,996,082 as applied above to claim 10, and further in view of Chou US 6,883,678.

McLaren '426, as modified, fails to teach three or more tabs on the lid.

Chou '678, figure 5, teaches a container with three pull tabs (52).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of McLaren '426, providing three lift tabs, as taught by Chou '678, motivated by the benefit of providing a means to assist a user in removing the lid from a container, whereby the user can grip at several different locations along the perimeter of the lid.

Furthermore, Examiner notes it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It would be obvious to one having ordinary skill to provide three or more pull tabs because such is a mere duplication of the parts of the invention.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

See attached PTO-892, citing relevant references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
PRIMARY EXAMINER